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Br. of Dudley & Michener for Appellant

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

Filed April 24, 1901.

No. 266.

A. W. CORBUS, *Appellant,*

vs.

THE ALASKA TREADWELL GOLD MINING COMPANY, *Appellee.*

Appeal from the District Court of the United States for the District of Alaska.

APPELLANT'S ADDITIONAL BRIEF.

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NORMAN T. ELLIOTT PRINTING CO

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APPELLANT'S ADDITIONAL BRIEF.

This brief is in addition to the one heretofore filed on behalf of the appellant, and it relates particularly to the point that the Constitution of the United States has been extended over the District of Alaska.

We assume that the facts stated in the bill of complaint conferred equitable jurisdiction on the court below. We assume also, for the sake of this argument, that the Constitution of the United States would not now be operative in the District of Alaska had it not been extended there by express treaty provision or congressional enactment.

I.

The Treaty.

The treaty with Russia for Alaska was proclaimed by the United States June 20, 1867. It is to be found in 15 Statutes, pages 539 to 544. Article 3, on page 542, contains the following language:

> "The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion." * * *

This article guarantees to those who remain in the ceded territory the following:

First. All the rights, advantages, and immunities of citizens of the United States.

Second. That they shall be maintained and protected in the free enjoyment of their liberty, property, and religion.

These guarantees are in the language of the Constitution and are evidently predicated on it. We submit that this language carried the general provisions of the Constitution to the territory ceded.

II.

The Act of 1884.

May 17, 1884, Congress passed an act "providing a civil government for Alaska," 23 Stats., 24.

(*a*) The first section of the act prescribes that "the territory ceded to the United States by Russia * * * shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said District is hereby established at Sitka."

(*b*) The act then provides for the appointment of a governor and prescribes his powers and duties, section 2. He is charged with the interests of the United States Government that may arise within his district. He may grant reprieves for offences committed against the laws of the district, or against the United States, until the decision of the President thereon shall be made known. He shall be *ex officio* comander-in-chief of the militia of the district, "and he shall perform generally in and over said district such acts as pertain to the office of governor of a territory, so far as the same may be made or become applicable thereto."

(*c*) It establishes a district court with the civil and criminal jurisdiction of district courts of the United States, and the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts, section 3.

(*d*) The act provides for a clerk of the court, a district attorney, and a marshal, section 4.

(*e*) It authorizes the President to appoint four commissioners for the district, who shall have the jurisdiction and powers of commissioners of the United States circuit courts; the powers of justices of the peace under the laws of Oregon; jurisdiction of testamentary and probate matters; the powers of notaries public, and the power to grant writs of *habeas corpus* returnable before the district judge for the District, section 5.

(*f*) The marshal is given the general authority and powers of the United States marshals of the states and territories, section 6.

(*g*) Writs of error in criminal cases are to issue to the district court from the United States Circuit Court for the District of Oregon, and the final judgments or decrees of said circuit and district court may be reviewed by this court as in other cases, section 7.

(*h*) The act also created a land district for the District of Alaska, made the mineral land laws of the United States applicable thereto, denied the application of the general land laws of the United

States, and prohibited a legislative assembly and a delegate in Congress.

(*i*) Section 7 of the act provides:

> "That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States."

Of this statute generally it may be said:

First. That it created an organized government for the District of Alaska, and it seems to us to follow that the Constitution of the United States has been in force and effect in the District of Alaska by virtue of the act aforesaid since May 17, 1884.

Second. The laws of Oregon, generally speaking, have been in force in the District of Alaska since the date aforesaid. It can not be denied that the Constitution of the United States operates upon the laws of Oregon and the laws of Oregon operate upon the Constitution of the United States. Whatever rights, privileges, advantages, and immunities the citizens of Oregon had by virtue of their laws and their relations to the United States, just such rights, privileges, advantages, and immunities have the citizens of the District of Alaska thereby enjoyed since May 17, 1884.

III.

The Acts of 1898 and 1899.

(*a*) By the act of May 14, 1898, Congress extended the homestead laws and provided for the right of

way for railroads in the district of Alaska (30 Stats., 409), and section 14 of that act extended the bonded warehouse privileges to the ports in Alaska.

(*b*) Section 2 of the bankruptcy act of July 1, 1898, 30 Stats., 545, makes the bankruptcy laws of the United States applicable to the District of Alaska, and provides that the United States courts in the district shall be courts of bankruptcy.

(*c*) The sundry civil appropriation bill for March 3, 1899, 30 Stats., 1097, extended the public land survey system to the District of Alaska.

IV.

The Criminal and Civil Codes.

(*a*) By the act of March 3, 1899, 30 Stats., 1253, Congress provided a criminal code for the District of Alaska, evidently constructed with due regard to the guarantees and prohibitions of the Constitution of the United States, and treating it as applicable to that District.

(*b*) The next Congress, by the act of June 6, 1900, First Session, Laws, page 321, chap. 786, by an act, "making further provision for the civil government for Alaska, and for other purposes," provided that the territory ceded by Russia "shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided." This act provides for the appointment of governor, notaries public, surveyor-general, judges, clerks, and other court and local officers.

prescribes their powers and duties, and then furnishes a code of civil procedure for the District.

This act, so far as it relates to the powers and duties of officers, is like the act of 1884, with a few exceptions:

(*a*) The commissioners are authorized to perform all the duties and exercise all the powers conferred on the United States commissioners by the general laws of the United States, and the special laws applicable to the District, section 6.

(*b*) Three clerks are to be appointed by the court, and they are authorized to perform the duties required of clerks of the United States courts in other districts, and such other duties as may be prescribed by law, section 7.

(*c*) Three district attorneys shall be appointed, who shall perform the duties required of United States district attorneys in other districts, and such other duties as may be required by law, section 8.

(*d*) The governor, surveyor-general, attorneys, judges, and marshals shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for a term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause, section 10.

(*e*) The criminal and civil codes of the District are collected into a book known as "Carter's Alaskan Code." The citations in this edition show

that these codes are largely made up from the Codes of Ohio, Iowa, and Oregon. These laws regulate practice in the courts, marriage, divorces, wills, conveyances, estates, descent, escheats, promissory notes, eminent domain, incorporations, interest and usury, mechanics' liens, partnership, insurance, etc. In fact, these codes apply to and regulate life and business to the conditions prevailing in the District of Alaska just as completely as do the Codes of New York apply to and regulate life and business in that State.

(*d*) More than that, section 366, on page 552, requires every officer in the District, for whom a special oath is not provided by law, to swear that he will defend and support the Constitution of the United States.

(*e*) Section 367 provides that "so much of the common law as is applicable and not inconsistent with the Constitution of the United States, or with any law passed or to be passed by the Congress, is adopted and declared to be law within the District of Alaska."

The Revised Statues.

Section 1891, Revised Statutes, is as follows:

> "The Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect within all the organized Territories, and in every Territory herein organized, as elsewhere within the United States."

We submit that the treaty and the laws heretofore cited bring the District of Alaska within the purview of the section just quoted. No matter what its name, it is now an "organized Territory."

The Sections Complained of.

The sections whose constitutionality is assailed in the bill are 460, 461, and 463 of the Criminal Code of Alaska, which is the act of March 3, 1899, to be found on pages 1336, 1337, 30 Statutes.

For the reasons heretofore stated, we respectfully submit that the Constitution of the United States is now, and at the time of the grievances complained of in the bill was, in force and effect in the District of Alaska, and that the sections of the criminal code last cited are in contravention of the Constitution, and are therefore null and void.

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